

STATE OF MONTANA  
BEFORE THE BOARD OF PERSONNEL APPEALS

In the matter of Unfair Labor Practice Charge No. 32-86

CITY OF KALISPELL, a Municipal  
Corporation,

Complainant,

vs.

THE AMERICAN FEDERATION OF  
STATE, COUNTY, AND MUNICIPAL  
EMPLOYEES, LOCAL NO. 256,

Defendant.

FINDINGS OF FACT;  
CONCLUSIONS OF LAW;  
RECOMMENDED ORDER

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I. INTRODUCTION

A hearing on the above-captioned matter was held on October 21, 1987 in the conference room of the Kalispell City Hall, in Kalispell, Montana before Arlyn L. Florman duly appointed Hearing Examiner of the Board of Personnel Appeals. The complainant was represented by Glen Neier, Kalispell City Attorney. George Hagerman, Field Representative for the American Federation of State, County and Municipal Employees, Montana Council No. 9 represented the defendant. The parties submitted evidence, exhibits and testimony, engaged in cross-examination and argument. Closing arguments were made in the form of post-hearing briefs and the matter was deemed submitted on November 18, 1987.

II. BACKGROUND

On December 12, 1986 the complainant, City of Kalispell, filed an unfair labor practice complaint with the Board of Personnel Appeals. In that complaint the complainant alleged that the defendant, American Federation of State, County and Municipal Employees Local Union No. 256:

1 ...committed an unfair labor practice by utilizing  
2 the grievance procedure to file alleged grievances  
3 that are totally unfounded, deliberately based on  
4 half-truths, are untrue, and these grievances have  
5 been filed specifically for the purpose of harassing  
6 and intimidating the supervisors. Specifically,  
7 the defendant has willingly and maliciously  
8 violated Article VII, 'Grievance and Arbitration  
9 Procedure,' by filing numerous grievances over  
10 issues not steeped in contract language, has asked  
11 for relief that would exceed the four corners of  
12 the contract, and has attempted to circumvent the  
13 steps of the procedure by appealing directly to  
14 governance for relief. The defendant is not  
15 complying with the clear contractual provisions  
16 and thus has committed a flagrant unfair labor  
17 practice.

18 Further, the defendant, by and through its agents  
19 and employees, has prepared and presented documents  
20 to members of the city council and to the mayor  
21 with the purpose of disparaging through innuendo  
22 and insinuation the performance of the supervisors  
23 and appointed officers of the city. The action  
24 complained of has the effect of interfering with  
25 the employment relationship between the city and its  
26 appointed officials.

27 The object of the defendant, in engaging in the  
28 conduct complained of in this unfair labor practice  
29 charge, is to restrain or coerce the City of  
30 Kalispell in the selection of its representative  
31 for the purposes of collective bargaining and/or  
32 adjustment of grievances and violation of Section  
39-31-402 MCA.

On January 13, 1987 the defendant answered the complaint stating that the complaint was vague, frivolous and unfounded.

On August 14, 1987 Joseph V. Maronick, Investigator for the Board of Personnel Appeals, issued an Investigation Report and Determination finding probable merit for the complaint. Subsequently Arlyn L. Plowman was appointed hearing examiner and the matter was noticed for hearing.

### III. FINDINGS OF FACT

1. Pursuant to the collective bargaining agreement between the complainant and the defendant (City Exhibit No. 1) the American Federation of State, County and Municipal Employees, AFL-CIO, its Montana State Council No. 9 and its

1 Local Union No. 256 is and has been recognized as the  
2 bargaining agent for the employees of the City of Kalispell,  
3 with the exception of police officers, firefighters and  
4 certain appointed officials and supervisors.

5 2. In 1986 the existing collective bargaining agree-  
6 ment between the parties was opened for negotiations. Those  
7 negotiations were difficult.

8 3. The collective bargaining agreement in effect  
9 between the parties contained a grievance and arbitration  
10 procedure.

11 4. Kenneth W. Hammer became Public Works Director for  
12 the city of Kalispell in 1984. Upon assuming that position,  
13 which had been vacant for some time, he began implementing  
14 changes in the department's methods and operations. One of  
15 the more significant changes involved the automation of the  
16 city's garbage pickup service which resulted in the layoff  
17 of several employees.

18 5. John "Ed" Kennedy took office as the mayor of the  
19 city of Kalispell in January 1986. The new mayor brought  
20 with him his own approach to city government and la-  
21 bor/management relations.

22 6. Approximately ten (10) grievances were filed  
23 against the city by bargaining unit employees during the  
24 summer and fall of 1986. Each of these grievances was  
25 disposed of prior to arbitration. More than half of these  
26 ten (10) grievances were resolved when the complainant took  
27 some sort of corrective action.

28 7. As evidenced by the above findings the relation-  
29 ship between the parties was less than harmonious during  
30 1986. Contract negotiations were difficult, unfair labor  
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1 practice complaints were filed with the Board of Personnel  
2 Appeals and an unusual number of grievances were filed.

3 8. During the hearing, the city in its presentation  
4 of evidence maintained that no single grievance or document  
5 in evidence amounted to an unfair labor practice. However,  
6 the city argued that the grievances and documents in evi-  
7 dence had the objective of challenging decisions made by  
8 Public Works Director Kenneth W. Hammer. The city did not  
9 produce direct evidence to substantiate its position that  
10 the defendant used the grievance and arbitration procedure  
11 to engage in unfair labor practices.

12 9. At the time Steve Cox was an officer for the  
13 American Federation of State, County and Municipal Employees  
14 Local No. 256 and for the American Federation of State,  
15 County and Municipal Employees Montana District Council No.  
16 9, he presented to Louis Ruiz, a member of the Kalispell  
17 City Council, documents which questioned the management and  
18 allocation of certain city funds. The city maintained  
19 during the hearing that this action by Steve Cox circumvent-  
20 ed normal procedure, was improper and an attempt by the  
21 union to interfere with the relationship between the city  
22 and its appointed officials. The unrefuted testimony of  
23 Steve Cox was that he provided Council Member Louis Ruiz  
24 with the documents not as a union official, but as a private  
25 citizen and city employee at the request of Council Member  
26 Louis Ruiz.

#### 27 IV. CONCLUSIONS OF LAW

28 1. The Board of Personnel Appeals has jurisdiction in  
29 this matter pursuant to the Montana Collective Bargaining  
30 for Public Employees Act, Section 39-31-101 et seq. MCA.  
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1           2. The complainant, city of Kalispell, is a public  
2 employer. The respondent, American Federation of State,  
3 County and Municipal Employees Local No. 256 and American  
4 Federation of State, County and Municipal Employees Montana  
5 Council 9, are labor organizations.

6           3. Section 39-31-402(1) MCA makes it an unfair labor  
7 practice for a labor organization or its agents to restrain  
8 or coerce a public employer in the selection of its rep-  
9 resentative for the purpose of collective bargaining or the  
10 adjustment of grievances.

11           4. No reliable, probative, or substantial evidence or  
12 argument submitted in this matter shows that it was an  
13 unfair labor practice for the defendant to file grievances.  
14 No doubt some of the grievances challenged the decisions and  
15 activities of certain of the complainant's officers and  
16 officials, but such is the nature of grievances. There are  
17 few, if any grievances filed by unions or union members that  
18 do not challenge some action or decision of employers or  
19 their representatives.

20           Furthermore, the complainant failed to show with a  
21 preponderance of the evidence that the defendant filed  
22 grievances as a means to restrain or coerce the complainant  
23 in the selection of its representative for purposes of  
24 collective bargaining. Although the complainant may be less  
25 than pleased with the way that the defendant processes and  
26 handles grievances, corrective action by the employer as the  
27 result of six of the ten grievances indicates that not all  
28 the grievances were mere harassment or coercion.

29           5. No reliable, probative or substantial evidence or  
30 argument submitted in this matter shows that it was an  
31 unfair labor practice for any city employee, union officer  
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1 or not, to respond to a request for information from a  
2 member of the city council.

3 6. Section 39-31-406(5) requires if, upon the prepon-  
4 derance of the testimony taken, the Board of Personnel  
5 Appeals is not of the opinion that the person named in the  
6 unfair labor practice complaint has engaged in or is engaged  
7 in the unfair labor practice, then the Board of Personnel  
8 Appeals shall state its findings of fact and shall issue an  
9 order dismissing the claim.

10 V. RECOMMENDED ORDER

11 IT IS ORDERED that the above-captioned unfair labor  
12 practice complaint be dismissed.

13 VI. SPECIAL NOTE

14 Pursuant to the Board of Personnel Appeal's rule,  
15 Administrative Rules of Montana 24.25.102(2), the  
16 above-recommended order shall become the final order  
17 of this Board unless written exceptions are filed within 20  
18 days after service of these findings of fact, conclusions of  
19 law and recommended order upon the parties.

20 Entered and dated this 24<sup>th</sup> day of November, 1987.

21 BOARD OF PERSONNEL APPEALS

22   
23 Arlyn L. Plowman  
24 Hearing Examiner  
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